

A-Engrossed
Senate Bill 536

Ordered by the Senate March 31
Including Senate Amendments dated March 31

Sponsored by Senator SOLLMAN (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes best interest standard for recommendations or sales of annuities to prospective purchasers. Specifies contents of and requirements for compliance with standard.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to annuities; creating new provisions; amending ORS 731.156; and prescribing an effective
3 date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 743.255 to**
6 **743.273.**

7 **SECTION 2. (1) As used in this section:**

8 **(a)(A) "Annuity" means:**

9 **(i) An agreement to make periodic payments, whether fixed or variable, in an amount:**

10 **(I) That is individually solicited, whether the agreement is classified as an individual an-**
11 **nuity or a group annuity; and**

12 **(II) In which the obligation to make all or some of the periodic payments, or the amount**
13 **of any periodic payment, depends upon the continuance of human life; and**

14 **(ii) Any additional benefits that safeguard the agreement from lapse or that provide a**
15 **special surrender value or special benefit or annuity if the annuitant becomes totally and**
16 **permanently disabled.**

17 **(B) "Annuity" does not include:**

18 **(i) A charitable remainder annuity trust or a charitable remainder unitrust as defined in**
19 **section 664(d) of the Internal Revenue Code; or**

20 **(ii) Payments made in accordance with settlement provisions of a life insurance policy.**

21 **(b) "Cash compensation" means a discount, concession, fee, service fee, commission,**
22 **sales charge, loan, override or cash benefit that a producer receives from an insurer, from**
23 **an intermediary or directly from a purchaser as compensation for the producer's recom-**
24 **mendation or sale of an annuity.**

25 **(c) "Comparable to the requirements of this section" means:**

26 **(A) For broker-dealers and registered representatives of broker-dealers, regulations that**
27 **the United States Securities and Exchange Commission and the Financial Industry Regula-**
28 **tory Authority promulgate as best interest obligations and use to supervise annuity recom-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **mendations and sales, including but not limited to Regulation Best Interest, 17 C.F.R.**
2 **240.151-1, as in effect on the operative date specified in section 5 of this 2023 Act.**

3 **(B) For investment advisers registered under federal or state securities laws, and for**
4 **investment adviser representatives, the fiduciary duties and all other requirements to which**
5 **investment advisers and investment adviser representatives are subject under ORS chapter**
6 **59 and the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 to 80b-21, including but not lim-**
7 **ited to Form ADV, 17 C.F.R. parts 275 and 279, and related interpretations.**

8 **(C) For fiduciaries and plan fiduciaries, the duties, obligations, prohibitions and other**
9 **requirements to which fiduciaries and plan fiduciaries are subject under the Internal Re-**
10 **venue Code and the Employee Retirement Income Security Act, 29 U.S.C. 1001 et seq., both**
11 **as in effect on the operative date specified in section 5 of this 2023 Act.**

12 **(d) “Consumer profile information” means information that is reasonably appropriate to**
13 **determine whether a recommendation or sale of an annuity addresses a consumer’s financial**
14 **situation, insurance needs and financial objectives, including at a minimum:**

15 **(A) Age;**

16 **(B) Annual income;**

17 **(C) Financial situation and needs, including debts and other obligations;**

18 **(D) Financial experience;**

19 **(E) Insurance needs;**

20 **(F) Financial objectives;**

21 **(G) Intended use for an annuity;**

22 **(H) Financial time horizon;**

23 **(I) Existing assets, including investment, annuity and other insurance holdings;**

24 **(J) Liquidity needs;**

25 **(K) Liquid net worth;**

26 **(L) Risk tolerance, including but not limited to the consumer’s willingness to accept**
27 **non-guaranteed elements in the annuity;**

28 **(M) Financial resources for funding an annuity; and**

29 **(N) Tax status.**

30 **(e) “Financial professional” means a producer that is regulated and is acting as:**

31 **(A) A broker-dealer that is registered under federal or state securities laws, or a regis-**
32 **tered representative of a broker-dealer;**

33 **(B) An investment adviser registered under federal or state securities laws or an in-**
34 **vestment adviser representative affiliated with the registered investment adviser; or**

35 **(C) A fiduciary, as described in 29 U.S.C. 1002(21) or as defined in 26 U.S.C. 4975(e)(3), both**
36 **as in effect on the operative date specified in section 5 of this 2023 Act.**

37 **(f) “Intermediary” means a person that for compensation contracts directly with an**
38 **insurer, or with another person that contracts with the insurer, for the purpose of facili-**
39 **tating a producer’s sale of the insurer’s annuities.**

40 **(g)(A) “Material conflict of interest” means a producer’s financial interest in the sale of**
41 **an annuity that a reasonable person would expect to influence the impartiality of the**
42 **producer’s recommendation of an annuity.**

43 **(B) “Material conflict of interest” does not include cash compensation or non-cash com-**
44 **penensation.**

45 **(h) “Non-cash compensation” means a form of compensation that is not cash compen-**

1 sation, such as health insurance, office rent, office support or retirement benefits.

2 (i) “Non-guaranteed elements” means a provision in an annuity contract that an insurer
3 may determine at the insurer’s discretion and that the insurer does not guarantee, such as:

4 (A) A premium, credited interest rate or bonus, benefit, value, dividend, credit that is
5 not based on interest or other charge;

6 (B) A formula that an insurer uses to calculate an item described in subparagraph (A)
7 of this paragraph; or

8 (C) Any provision in the annuity contract the calculation of which depends on another
9 provision that is not guaranteed.

10 (j) “Producer” means a person that is licensed under ORS 744.052 to 744.089 or an insurer,
11 if the insurer solicits, negotiates or sells an annuity without involving a producer.

12 (k)(A) “Recommendation” means a producer’s advice to a consumer that the producer
13 intends as an inducement to sell, exchange or replace an annuity or that results in a sale,
14 exchange or replacement of an annuity in accordance with the producer’s advice.

15 (B) “Recommendation” does not include a general communication to the public, general-
16 ized customer service, administrative support, general educational information and tools,
17 prospectuses or other product material or sales material.

18 (L) “Replacement” means a purchase of a new annuity that an insurer or producer knows
19 or should know will cause an existing annuity or other insurance policy to:

20 (A) Lapse, become forfeit, be surrendered or partially surrendered, become assigned or
21 partially assigned to the replacing insurer or otherwise terminate;

22 (B) Convert to paid-up insurance, continue as extended term insurance or otherwise re-
23 duce in value using nonforfeiture benefits or other policy values;

24 (C) Reduce through amendment the annuity’s or other insurance policy’s benefits or the
25 term during which coverage remains effective or in which an insurer pays benefits;

26 (D) Be reissued with a reduction in cash value; or

27 (E) Be used in a financed purchase.

28 (2)(a) Except as provided in paragraph (b) of this subsection, this section applies to any
29 sale or recommendation of an annuity.

30 (b) This section does not apply to a transaction that involves:

31 (A) A direct-response solicitation, if a producer does not make a recommendation based
32 on consumer profile information; or

33 (B) A contract that funds:

34 (i) An employee pension or welfare benefit plan that is covered under the Employee Re-
35 tirement and Income Security Act, 29 U.S.C. 1001 et seq., as in effect on the operative date
36 specified in section 5 of this 2023 Act;

37 (ii) A plan that an employer establishes or maintains in accordance with sections 401(a),
38 401(k), 403(b) or 408(k) or (p) of the Internal Revenue Code;

39 (iii) A governmental plan or church plan, as defined in section 414(d) and (e) of the
40 Internal Revenue Code;

41 (iv) A deferred compensation plan that a state or local government or tax exempt or-
42 ganization establishes or maintains in accordance with section 457 of the Internal Revenue
43 Code;

44 (v) A nonqualified deferred compensation arrangement that an employer or sponsor es-
45 tablishes or maintains;

1 (vi) A settlement or assumption of liability associated with personal injury litigation or
2 a dispute or claim resolution process; or

3 (vii) A formal prepaid funeral contract.

4 (3)(a) A producer, in making a recommendation of an annuity, shall act in the consumer's
5 best interest, under the circumstances the producer knows at the time the producer makes
6 the recommendation, without placing the producer's or insurer's financial interests ahead
7 of the consumer's interests.

8 (b) A producer satisfies the producer's best interest obligations if the producer satisfies
9 the care obligation set forth in subsection (4) of this section, the disclosure obligation set
10 forth in subsection (5) of this section, the conflict of interest obligation set forth in sub-
11 section (6) of this section and the documentation obligation set forth in subsection (7) of this
12 section.

13 (4)(a) A producer satisfies the care obligation if the producer, in making a recommen-
14 dation, exercises reasonable skill, diligence and care to:

15 (A) Know the consumer's financial situation, insurance needs and financial objectives;

16 (B) Understand the options the producer may recommend to the consumer after making
17 a reasonable inquiry into available options;

18 (C) Have a reasonable basis for believing that:

19 (i) The producer's recommended option effectively addresses the consumer's financial
20 situation, insurance needs and financial objectives when considered in light of consumer
21 profile information; and

22 (ii) The consumer will benefit from certain features of the annuity, such as annuitization,
23 death or living benefits or other insurance-related features; and

24 (D) Communicate to the consumer the basis for the producer's recommendation.

25 (b) A producer, in satisfying the care obligation, shall:

26 (A) Make reasonable efforts to obtain consumer profile information before making a
27 recommendation;

28 (B) Consider products that the producer may sell in accordance with the producer's li-
29 cense if the products address the consumer's financial situation, insurance needs and finan-
30 cial objectives, except that the consideration does not require the producer to analyze or
31 consider products that are outside the scope of the producer's license, to analyze or consider
32 other products or strategies that are available in the insurance market at the time the pro-
33 ducer makes the recommendation, or to meet any other obligation that a producer with a
34 similar license does not have to meet;

35 (C) Make a recommendation to address a consumer's financial situation, insurance needs
36 and financial objectives on the basis of consumer profile information, the characteristics of
37 the insurer and product costs, rates, benefits and features, and vary the importance of con-
38 sumer profile information, the characteristics of the insurer and product costs, rates, bene-
39 fits and features to account for the facts and circumstances of a particular case, except that
40 the producer may not consider in isolation any factor set forth in this subparagraph; and

41 (D) Consider the whole transaction if the transaction will exchange or replace an existing
42 annuity, which requires that the producer consider whether:

43 (i) The consumer will incur a surrender charge, be required to begin a new surrender
44 period, lose existing death, living or other contractual benefits or incur increased fees, in-
45 vestment advisory fees or charges for riders or similar product enhancements;

1 (ii) The replacement product will substantially benefit the consumer over the life of the
2 replacement product, in comparison to the existing annuity; and

3 (iii) The prospective producer had a previous annuity exchange or replacement, partic-
4 ularly within the preceding 60 months.

5 (c) The care obligation set forth in paragraph (a) of this subsection:

6 (A) Applies to a particular annuity as a whole, to the underlying subaccounts to which
7 funds are allocated at the time the annuity is purchased or exchanged and to any riders or
8 similar product enhancements; and

9 (B) Does not:

10 (i) Create a fiduciary obligation for the producer or a fiduciary relationship between the
11 producer and a consumer;

12 (ii) Require a producer to necessarily recommend an annuity with the lowest one-time
13 or multiple occurrence compensation structure;

14 (iii) Require a producer to obtain any license other than a producer license with appro-
15 priate authority to solicit, negotiate or sell insurance in this state and does not require the
16 producer to have or obtain a license to sell securities in this state if the producer does not
17 give advice or provide services that are subject to federal or state securities laws or does
18 not engage in any other activity that requires another professional license; or

19 (iv) Require of a producer an ongoing obligation to monitor compliance with the re-
20 quirements set forth in paragraph (a) of this subsection, unless a separate fiduciary, con-
21 sulting, investment advising or financial planning agreement with the consumer provides
22 otherwise.

23 (5)(a) Before making a recommendation of or selling an annuity to a consumer, a pro-
24 ducer shall prominently disclose on a separate form and in a manner substantially similar
25 to the manner the Director of the Department of Consumer and Business Services specifies
26 by rule:

27 (A) The producer's role in the transaction and the producer's relationship with the con-
28 sumer;

29 (B) Whether the producer has a license and authority to sell fixed annuities, fixed in-
30 dexed annuities, variable annuities, life insurance, mutual funds, stocks, bonds or certificates
31 of deposit;

32 (C) Whether the producer may recommend or sell insurance products under contract or
33 otherwise from one insurer, from two or more insurers or from two or more insurers while
34 remaining under a primary contract with one insurer;

35 (D) The sources and types of the cash compensation and non-cash compensation the
36 producer will receive for making a recommendation of or selling an annuity, including
37 whether the compensation is a commission that is part of a premium or other remuneration
38 the producer receives from the insurer, an intermediary or another producer or whether the
39 compensation is a fee that results from a contract for advice or consulting services;

40 (E) The consumer's right to request additional information about the cash compensation
41 the producer disclosed under subparagraph (D) of this paragraph; and

42 (F) A reasonable estimate, at the request of the consumer or a designated representative
43 of the consumer, of the cash compensation that the producer will receive from recommend-
44 ing or selling the annuity, whether the producer will receive the cash compensation once or
45 on more than one occasion and, if the compensation occurs on more than one occasion, the

1 amount of each payment, all of which the producer may disclose as a range or a percentage.

2 (b) Before making a recommendation or completing a sale of an annuity to a customer,
3 a producer must have a reasonable basis for believing that the consumer was informed of
4 the annuity's features, such as the potential tax penalties that could result from the
5 consumer's sale, exchange, surrender or annuitization of the annuity, the potential surren-
6 der period and surrender charges, any annual fees, mortality and expense fees, investment
7 advisory fees, features of and potential charges for riders or other options, limitations on
8 interest returns, potential charges for non-guaranteed elements of the annuity, the annuity's
9 insurance and investment components and market risk.

10 (6) A producer shall identify and avoid, or reasonably manage and disclose, any material
11 conflict of interest, including a material conflict of interest that is related to an ownership
12 interest.

13 (7) A producer, at the time the producer recommends or sells an annuity to a consumer,
14 shall:

15 (a) Record in writing the substance of and basis for the producer's recommendation; and

16 (b) Obtain from the consumer in the following circumstances a signed statement on
17 separate forms and in a manner substantially similar to the forms and manner the director
18 prescribes by rule:

19 (A) If a consumer refuses to provide consumer profile information, the consumer's
20 statement must acknowledge that the consumer refused to provide consumer profile infor-
21 mation and that the consumer understands the ramifications of not providing consumer
22 profile information or providing incomplete consumer profile information.

23 (B) If a consumer enters into an annuity transaction that is not based on a producer's
24 recommendation, the consumer's statement must acknowledge that the annuity transaction
25 is not recommended.

26 (8) The best interest obligation set forth in subsection (3) of this section applies to any
27 producer who exercises material control or influence over a recommendation or sale of an
28 annuity and who receives direct compensation as a result of the recommendation or sale,
29 even if the producer did not have direct contact with the consumer. Providing or delivering
30 marketing or educational materials, product wholesaling or back office support for, or gen-
31 eral supervision of, a producer does not, alone, constitute material control or influence.

32 (9)(a) Except as provided in paragraph (b) of this subsection, a producer does not have
33 an obligation under subsection (3) of this section to a consumer if:

34 (A) The producer does not make a recommendation of an annuity;

35 (B) The producer made a recommendation based on materially inaccurate information
36 from the consumer;

37 (C) The consumer refused to provide consumer profile information and the producer did
38 not recommend the annuity that was the subject of the consumer's transaction; or

39 (D) The consumer enters into a transaction for an annuity that the producer did not
40 recommend.

41 (b) An insurer's issuance of an annuity must be reasonable under all of the circum-
42 stances of which the insurer has actual knowledge at the time the insurer issues the annu-
43 ity.

44 (10)(a) Except as provided in subsection (9) of this section, an insurer may not issue an
45 annuity on the basis of a recommendation to a consumer unless, after considering the con-

1 consumer profile information, the insurer has a reasonable basis for believing that the annuity
2 would effectively address the consumer's financial situation, insurance needs and financial
3 objectives.

4 (b) An insurer shall establish and maintain a supervision system that is reasonably de-
5 signed to ensure that the insurer and the insurer's producers comply with this section. The
6 system, at a minimum, must:

7 (A) Have reasonable procedures for educating producers about the requirements of this
8 section and incorporate the education into relevant training materials for producers;

9 (B) Have standards for training producers on the insurer's products that require the
10 producers to comply with the requirements of subsection (13) of this section;

11 (C) Provide product-specific training and training materials that explain all material
12 features of the insurer's annuity products to producers;

13 (D) Establish procedures for reviewing each of a producer's recommendations before the
14 insurer issues an annuity to ensure that a reasonable basis exists for determining that the
15 annuity would effectively address each consumer's financial situation, insurance needs and
16 financial objectives, which review may consist of screening recommendations, electronically
17 or otherwise, identifying recommendations that require further review and reviewing only
18 the recommendations that meet the criteria for additional review;

19 (E) Have a method for detecting recommendations that do not comply with the provisions
20 of this section, which may include confirming consumer profile information, conducting
21 systematic customer surveys and interviews, issuing confirmation letters to purchasers,
22 taking statements or attestations from producers and otherwise conducting internal moni-
23 toring, and may consist of taking appropriate samples or confirming consumer profile infor-
24 mation after issuing and delivering an annuity;

25 (F) Assess before or at the time the insurer issues or delivers an annuity whether a
26 producer has provided the information the producer must provide to a consumer under this
27 section;

28 (G) Have reasonable procedures for identifying and addressing suspicious refusals to
29 provide consumer profile information;

30 (H) Have reasonable procedures for identifying and eliminating any sales contests, sales
31 quotas, bonuses and non-cash compensation that are based on sales of specific annuities
32 within a limited period of time, except that the procedures need not prohibit non-cash com-
33 pensation that consists of health insurance, office rent, office support, retirement benefits
34 or other employee benefits if the benefits are not based on the sales volume of a specific
35 annuity within a limited period of time; and

36 (I) Require annual written reports to the insurer's senior management, including the
37 senior manager with responsibility for auditing functions, that details the insurer's process
38 of reviewing and testing the effectiveness of the system and taking or recommending cor-
39 rective action to address flaws.

40 (c) An insurer may contract with another person to perform a function required under
41 this subsection, but the insurer remains responsible for taking appropriate corrective action
42 and is liable under subsection (17) of this section for any sanctions and penalties for failing
43 to comply with the requirements of this section even if the insurer contracted with another
44 person to meet the requirement and even if the insurer complies with the requirements of
45 paragraph (d) of this subsection.

1 (d) If an insurer contracts with another person under this subsection, the insurer must
2 supervise the contractor's performance by:

3 (A) Monitoring the performance and conducting audits if appropriate; and

4 (B) Obtaining each year from a senior manager with responsibility for the function the
5 contractor performs a certification that the manager has a reasonable basis for believing and
6 does believe that the function is being performed properly.

7 (e) An insurer need not include in a system described in paragraph (b) of this subsection:

8 (A) A producer's recommendation to consumers of a product that the insurer does not
9 offer; or

10 (B) A consideration of or comparison to options available to a producer other than an-
11 nuities the insurer offers or a consideration of or comparison to compensation available to
12 the producer through options other than annuities the insurer offers.

13 (11) An insurer or a producer may not dissuade or attempt to dissuade a person from
14 truthfully responding to an insurer's request to confirm consumer profile information, from
15 filing a complaint or from cooperating with an investigation of a complaint.

16 (12)(a) An insurer or financial professional that makes a recommendation of or sells an
17 annuity in compliance with standards, business rules, controls and procedures that are
18 comparable to the requirements of this section complies with the requirements of this sec-
19 tion if the insurer exercises the supervision described in paragraph (b) of this subsection,
20 even if the standard, business rule, control or procedure does not apply directly to the rec-
21 ommendation or the annuity.

22 (b) For supervision of a financial professional under standards, business rules, controls
23 and procedures that are comparable to the requirements of this section to qualify as com-
24 plying with the requirements of this section, the insurer shall:

25 (A) Use information the insurer collects in the normal course of the insurer's business
26 to monitor the financial professional's relevant conduct or to monitor any person that is
27 responsible for supervising the financial professional's conduct, such as the financial
28 professional's broker-dealer or an investment adviser registered under federal or state se-
29 curities laws; and

30 (B) Provide to a person that is responsible for supervising the financial professional's
31 conduct as described in subparagraph (A) of this paragraph reports and information that are
32 reasonably appropriate for assisting the person to properly supervise the financial profes-
33 sional.

34 (c) This subsection does not affect an insurer's obligation to comply with subsection
35 (10)(a) of this section, except that the insurer may base an analysis of whether an annuity
36 would effectively address a consumer's financial situation, insurance needs and financial ob-
37 jectives on information the insurer receives from a financial professional or a person that
38 supervises the conduct of the financial professional.

39 (d) This subsection does not affect the director's powers to investigate and enforce the
40 provisions of this section.

41 (13)(a) A producer may not solicit the sale of an annuity unless the producer has knowl-
42 edge that is adequate to make a recommendation of the annuity and has complied with the
43 insurer's standards for product training. A producer may rely for compliance with this sub-
44 section on product-specific training standards and materials the insurer provides.

45 (b) A producer that makes a recommendation of or sells an annuity shall complete, at a

1 **minimum, a four-hour training course with a continuing education provider that has regis-**
2 **tered with the Department of Consumer and Business Services.**

3 **(c) A producer with authority to transact life insurance in this state who intends to make**
4 **recommendations of or sell annuities shall complete the course described in paragraph (b)**
5 **of this section within 180 days following the operative date specified in section 5 of this 2023**
6 **Act. A producer that obtains authority to transact life insurance in this state after the op-**
7 **erative date specified in section 5 of this 2023 Act may not make a recommendation of or sell**
8 **an annuity until after completing the course.**

9 **(d) A producer that has completed a course described in paragraph (b) of this subsection**
10 **before the operative date specified in section 5 of this 2023 Act shall within 180 days after the**
11 **operative date specified in section 5 of this 2023 Act complete either:**

12 **(A) A new training course that complies with rules the director adopts under this sec-**
13 **tion; or**

14 **(B) A supplemental one-hour training course on appropriate standards of conduct, sales**
15 **practices, disclosure requirements and what to be aware of when replacing an existing an-**
16 **nuity.**

17 **(e) A producer may complete a training course described in paragraph (b) of this sub-**
18 **section in a classroom or by self-study in accordance with rules the director adopts under**
19 **this section.**

20 **(f) A producer that completes in another state a training course or components of a**
21 **training course that is substantially similar to the requirements specified in this subsection**
22 **complies with the applicable requirements of this subsection.**

23 **(14)(a) A training course described in subsection (13)(b) of this section must be of suffi-**
24 **cient length to qualify for four continuing education credits, but may be longer, and must**
25 **cover:**

26 **(A) Types and classifications of annuities;**

27 **(B) How to identify parties to an annuity;**

28 **(C) How contract provisions for specific annuities affect purchasers;**

29 **(D) Income taxation of qualified and nonqualified annuities;**

30 **(E) Primary uses for annuities; and**

31 **(F) Appropriate standards of conduct, sales practices, disclosure requirements and what**
32 **to be aware of when replacing an existing annuity.**

33 **(b) A person that provides a training course described in subsection (13)(b) of this sec-**
34 **tion:**

35 **(A) Shall register with the department as a continuing education provider and comply**
36 **with rules the director adopts for continuing education providers;**

37 **(B) Shall cover in a training course the person intends as compliant with the require-**
38 **ments of this subsection all of the topics described in paragraph (a) of this subsection;**

39 **(C) May cover in a training course topics in addition to the topics described in paragraph**
40 **(a) of this subsection;**

41 **(D) Shall comply with reporting requirements and issue certificates of completion in ac-**
42 **cordance with rules the director adopts under this section; and**

43 **(E) May not present during a training course described in paragraph (a) of this sub-**
44 **section marketing information or training that concerns sales techniques or that is specific**
45 **to a particular insurer's products.**

1 (15) An insurer shall verify that a producer has completed a training course described in
 2 subsection (13)(b) of this section before permitting the producer to make a recommendation
 3 of or sell the insurer's annuities. For the verification, the insurer shall obtain from the
 4 producer a certificate of completion for the course or consult other reliable sources that
 5 document the producer's completion of the course.

6 (16) An insurer and any producer, contractor, general agent or independent agent affil-
 7 iated with the insurer shall maintain, for not less than three years after the date of any
 8 recommendation or sale of an annuity, and shall make available to the director upon demand,
 9 records of all information collected from and disclosures, including oral disclosures, made to
 10 a consumer or purchaser, and any other information that was used in or formed the basis
 11 for a recommendation of an annuity. An insurer may, but is not required to, maintain re-
 12 cords on a producer's behalf. An insurer may maintain a record under this subsection on
 13 paper, as a photograph or in any electronic media that accurately reproduces the content
 14 of the record and can be easily retrieved and perceived.

15 (17)(a) The director may initiate an enforcement proceeding or action against an insurer
 16 for the insurer's failure to comply with or violation of this section or for a failure or vio-
 17 lation committed by a producer or contractor affiliated with the insurer. The director may:

18 (A) Require the insurer, the producer, the contractor or a general or independent agency
 19 affiliated with the insurer to take reasonably appropriate corrective action to remedy harm
 20 to a person injured by the failure or violation; and

21 (B) Impose a civil penalty or other sanction.

22 (b) The director may reduce or waive a civil penalty the director imposes under this
 23 subsection if the director determines that the insurer took corrective action promptly and
 24 that the insurer's failure to comply or violation was not part of a pattern or practice.

25 (c) The director may adopt rules to carry out the provisions of this section.

26 (18) This section does not create or imply a private cause of action for a violation of the
 27 provisions of this section or subject a producer to civil liability under the best interest obli-
 28 gation described in subsection (4) of this section or under standards that govern the conduct
 29 of a fiduciary or of a fiduciary relationship.

30 **SECTION 3.** ORS 731.156 is amended to read:

31 731.156. "Variable life insurance" and "variable annuity" mean [*those*] forms of life insurance
 32 or annuity benefits, respectively, [*which*] **that** vary according to the investment experience of a
 33 separate account or accounts maintained by the insurer with respect to policies providing such
 34 benefits[.] **or are securities under the Securities Act of 1933, 15 U.S.C. 77a et seq., as in effect**
 35 **on the operative date specified in section 5 of this 2023 Act, that vary according to the per-**
 36 **formance of a benchmark index, rate or fund if the principal or minimum rate of interest is**
 37 **not guaranteed and might be subject to a market value adjustment.** For convenience, reference
 38 to "variable life insurance" in the Insurance Code includes variable life insurance and variable an-
 39 nuities as defined in this section, except if the inclusion of variable annuities obviously is inappli-
 40 cable or if the context requires, or the Insurance Code provides, otherwise.

41 **SECTION 4.** Section 2 of this 2023 Act and the amendments to ORS 731.156 by section 3
 42 of this 2023 Act apply to annuities that an insurer or producer recommends, sells or issues
 43 on or after the operative date specified in section 5 of this 2023 Act.

44 **SECTION 5.** (1) Section 2 of this 2023 Act and the amendments to ORS 731.156 by section
 45 3 of this 2023 Act become operative on January 1, 2024.

1 **(2) The Director of the Department of Consumer and Business Services may adopt rules**
2 **and take any other action before the operative date specified in subsection (1) of this section**
3 **that is necessary to enable the director, on and after the operative date specified in sub-**
4 **section (1) of this section, to undertake and exercise all of the duties, functions and powers**
5 **conferred on the director by section 2 of this 2023 Act and the amendments to ORS 731.156**
6 **by section 3 of this 2023 Act.**

7 **SECTION 6. This 2023 Act takes effect on the 91st day after the date on which the 2023**
8 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

9
